

7 April 1978

Honorable Abraham Ribicoff, Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is in response to your request for views on H.R. 10, S. 80 and S. 980, bills to increase the participation of Federal civilian and Postal Service employees in the political process of the country and to protect such employees from improper political solicitations.

I defer comment on the merits of the question of the rights of Government employees generally to engage in political activities. I wish, however, to make several comments concerning the impact which each of these bills would have on the Government's foreign intelligence activities.

The Central Intelligence Agency produces national foreign intelligence for policy makers in the Federal Government. The usefulness and credibility of CIA's product depends in part upon its preserving both the appearance and the substance of impartiality. Even a hint of possible bias, such as could result from participation in politics by Agency employees, could damage the Agency's credibility. These same problems face each intelligence organization which produces national foreign intelligence. For these reasons, I support continued restrictions on the political activities of employees of intelligence organizations.

The provisions of S. 80, which establish regulations for employees of the CIA, recognize these very concerns. The bill would continue current restrictions on the political activities of CIA employees unless the Director of Central Intelligence determines by regulation that participation in political activities would not "adversely affect the integrity of the Government or the public's confidence in the integrity of the Government." As head of the CIA, I have no objections to this feature of S. 80.

S. 980 would permit Federal employees to engage in local partisan political activities and to hold local elective office. As indicated above, I believe employees of intelligence organizations should not participate in any partisan political activity. For this reason, I must object to passage of S. 980 in its present form.

Although H.R. 10 recognizes to some extent the need to limit the political activities of intelligence employees, I believe its provisions are inadequate. In addition, I must oppose the method the bill would establish for implementing restrictions on political activities by these employees. H.R. 10 would limit the political activities of employees whose positions fall in the category of "restricted positions." This category includes "any position [in which] the duties and responsibilities ... require [an] employee as a substantial part of his official activities to engage in foreign intelligence activities relating to national security." The Civil Service Commission would determine by regulation which positions meet the criteria, and an employee could challenge the determination in court. The overall mission of the CIA and other intelligence organizations clearly fits this vague criteria for a "restricted position," but this may or may not be true of all the activities of each individual employee. Because of this potential contradiction between each organization's overall activity and an individual employee's responsibility, applications of the standard would be difficult and could have the contentious and inequitable result of limiting the activities of some employees but not others. In addition, if even some employees were permitted to engage in other than local non-partisan political activities, the door would be open to damaging charges that the organization is "infiltrating" political campaigns and to questions about the impartiality of its product.

Implementation of the provisions of this bill could also conflict with the statutory responsibility of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure (50 U.S.C. 403(d)(3)) and with the CIA's exemption from the provisions of any law which requires the publication or disclosure of CIA organization, functions or official titles (50 U.S.C. 403(g)). For example, the Civil Service Commission would investigate and then issue regulations stating which positions in the Agency require the incumbent to engage in "foreign intelligence activities relating to national security." This process apparently would require submission of organizational and functional data, thereby resulting in a proliferation of access to protected information, and increasing the risk of disclosure. Further, the regulations eventually issued might very well result in disclosure of positions within the Agency which are themselves classified. The same dangers arise from investigations and prosecution of alleged violations of the legislation, as well as from the provision of proposed section 7330(a) of H.R. 10 permitting an employee to challenge the classification of his position in court.

For these reasons, I must oppose H. R. 10 in its present form. These problems would be solved by an amendment which makes clear that "restricted positions" includes all employees of an intelligence organization. Such an amendment would insure equality in the treatment of employees, guarantee the appearance of impartiality in products and, by eliminating the need for hearings by the Civil Service Commission, greatly reduce the potential for disclosure of sensitive information. I am enclosing proposed amendatory language to accomplish this. Further, I have enclosed for possible inclusion in the report accompanying the bill, language listing those agencies which are covered by the proposed amendment. Both the proposed amendment and the report language have been developed in conjunction with the Department of Defense and the Office of Management and Budget.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Yours sincerely,

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"(i) the duties and responsibilities of such position meet the requirements of paragraphs (A) or (B) of this subsection, or

"(ii) the duties and responsibilities of such position normally require the officer or employee holding such position to devote a significant portion of his or her time to representing the United States in discussions or negotiations with representatives of foreign governments or international organizations, or require such officer or employee to exercise discretion in the determination or execution of foreign policy;

"(D) any position with respect to which there is in effect a determination by the Commission, by regulation, upon consultation with the Secretary of State, that the position is in an agency other than those described in paragraph (C) of this subsection and requires the performance of duties and responsibilities similar to those described in paragraph (C)(ii) of this subsection;

"(E) any position with respect to which there is in effect a determination by the Commission, by regulation, that the position is in the Internal Revenue Service (including the Office of Chief Counsel) and is not otherwise included within the provisions of this subsection and such position involves--

"(i) the exercise of discretion in

"(I) the determination, assessment, or collection of taxes under title 26, United States Code;

"(II) the preparation or review of interpretative opinions with respect to title 26, United States Code; or

"(III) establishing programs concerning the allocation or use of appropriated funds or personnel to specific aspects of the administration and enforcement of the internal revenue laws; or

"(ii) access to return, return information or taxpayer return information, as those terms are defined in 26 U.S.C. 6103(b)(1), (2), and (3), which identifies a specific taxpayer or group of taxpayers; and

"(F) with respect to any position under paragraphs (B), (D), or (E) of this subsection, the Commission determines that the restrictions on political activity imposed on such employee in such position are justified in order to insure the efficiency or integrity of the Government or the public's confidence in the efficiency or integrity of the Government."

Suggested Language for Inclusion in Report in Explanation of Phrase "Agency ... engaging in foreign intelligence or counterintelligence activities," §7322(9)(A) at page 5 of H.R. 10

"The term 'Agency...' includes the following agencies, departments and components of the Federal Government:

- A. Central Intelligence Agency;
 - B. National Security Agency;
 - C. Defense Intelligence Agency;
 - D. Offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;
 - E. Intelligence elements of the military services;
 - F. Intelligence elements of the Federal Bureau of Investigation;
 - G. Bureau of Intelligence and Research of the Department of State;
 - H. Intelligence elements of the Department of the Treasury;
 - I. Intelligence elements of the Department of Energy;
 - J. Intelligence elements of the Drug Enforcement Administration;
- and
- K. Staff elements of the Office of the Director of Central Intelligence that support execution of the Director's Intelligence Community responsibilities."

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